

APR 27 2015

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CASE NO. 3:15-cr-00047-RJC-DCK-1**

**U.S. DISTRICT COURT
WESTERN DISTRICT OF NC**

UNITED STATES OF AMERICA

v.

DAVID HOWELL PETRAEUS,

Defendant.

**MOTION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS,
THE ASSOCIATED PRESS, BLOOMBERG L.P.,
THE CHARLOTTE OBSERVER PUBLISHING COMPANY,
DOW JONES & COMPANY, INC., FIRST LOOK MEDIA, INC.,
NATIONAL PUBLIC RADIO, INC., THE NEW YORK TIMES COMPANY,
AND THE WASHINGTON POST TO INTERVENE AND UNSEAL**

The Reporters Committee for Freedom of the Press, The Associated Press, Bloomberg L.P., The Charlotte Observer Publishing Company, Dow Jones & Company, Inc., First Look Media, Inc., National Public Radio, Inc., The New York Times Company, and The Washington Post (collectively, the “News Media Intervenors”) by and through their undersigned counsel hereby move to intervene in this action for the limited purpose of seeking an order unsealing (1) the Sentencing Memorandum and attachments thereto filed under seal by counsel for David Howell Petraeus (“Defendant” or “Petraeus”) on April 15, 2015 (ECF No. 17) and (2) any statements or letters of support submitted to the Court on behalf of Defendant in connection with his sentencing. *See* LCrR 55.1(H)–(I).

IDENTITY OF THE NEWS MEDIA INTERVENORS

The Reporters Committee for Freedom of the Press (the "Reporters Committee") is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the right to a free and unfettered press guaranteed by the First Amendment. Since 1970, the Reporters Committee and its attorneys have provided assistance, guidance, and research in First Amendment and freedom of information litigation. The Reporters Committee frequently represents the interests of the press and the public in cases involving access to judicial proceedings and court records.

The Associated Press ("AP") is a news cooperative organized under the Not-for-Profit Corporation Law of New York, and owned by its 1,500 U.S. newspaper members. The AP's members and subscribers include the nation's newspapers, magazines, broadcasters, cable news services and Internet content providers. The AP operates from 300 locations in more than 100 countries. On any given day, AP's content can reach more than half of the world's population.

Bloomberg L.P. operates Bloomberg News, a 24-hour global news service based in New York with more than 2,400 journalists in more than 150 bureaus around the world. Bloomberg supplies real-time business, financial, and legal news to the more than 319,000 subscribers to the Bloomberg Professional service world-wide and is syndicated to more than 1000 media outlets across more than 60 countries. Bloomberg television is available in more than 340 million homes worldwide and Bloomberg radio is syndicated to 200 radio affiliates nationally. In addition, Bloomberg publishes Bloomberg Businessweek, Bloomberg Markets and Bloomberg Pursuits magazines with a combined circulation of 1.4 million readers and Bloomberg.com and Businessweek.com receive more than 24 million visitors each month. In total, Bloomberg

distributes news, information, and commentary to millions of readers and listeners each day, and has published more than one hundred million stories.

The Charlotte Observer Publishing Company publishes *The Charlotte Observer*, the largest circulation daily newspaper in North Carolina, and operates the website www.charlotteobserver.com, which is read by approximately three million unique visitors each week.

Dow Jones & Company, Inc., a global provider of news and business information, is the publisher of The Wall Street Journal, Barron's, MarketWatch, Dow Jones Newswires, and other publications. Dow Jones maintains one of the world's largest newsgathering operations, with more than 1,800 journalists in nearly fifty countries publishing news in several different languages. Dow Jones also provides information services, including Dow Jones Factiva, Dow Jones Risk & Compliance, and Dow Jones VentureSource. Dow Jones is a News Corporation company.

First Look Media, Inc. is a new non-profit digital media venture that produces The Intercept, a digital magazine focused on national security reporting.

National Public Radio, Inc. is an award-winning producer and distributor of noncommercial news programming. A privately supported, not-for-profit membership organization, NPR serves a growing audience of more than 26 million listeners each week by providing news programming to 285 member stations that are independently operated, noncommercial public radio stations. In addition, NPR provides original online content and audio streaming of its news programming. NPR.org offers hourly newscasts, special features and 10 years of archived audio and information.

The New York Times Company is the publisher of *The New York Times* and *The International Times*, and operates the news website nytimes.com.

WP Company LLC (d/b/a *The Washington Post*) publishes one of the nation's most prominent daily newspapers, as well as a website, www.washingtonpost.com, that is read by an average of more than 20 million unique visitors per month.

MOTION TO INTERVENE AND UNSEAL

It is well-settled that members of the media and the public may intervene in an action to challenge the sealing of a court document. *See Company Doe v. Pub. Citizen*, 749 F.3d 246, 262–63 (4th Cir. 2014) (explaining that news organizations have an interest in “sealed judicial documents and materials sufficient to satisfy the constitutional standing requirements of injury, causation, and redressability”); *see also, e.g., In re Knight Publ'g Co.*, 743 F.2d 231, 234 (4th Cir. 1984); *United States v. Aref*, 533 F.3d 72, 81 (2d Cir. 2008) (holding that a motion to intervene to assert the public's First Amendment right of access to criminal proceedings is proper); *Jessup v. Luther*, 227 F.3d 993, 997 (7th Cir. 2000) (recognizing intervention “as the logical and appropriate vehicle by which the public and the press may” assert right of access). Such motions to intervene are routinely granted, *see Company Doe*, 749 F.3d at 262–63, and, indeed, the Local Criminal Rules of this Court contemplate that interested non-parties like the News Media Intervenors may move to unseal documents, including sentencing memoranda, in criminal cases. *See* LCrR 55.1(H)–(I).

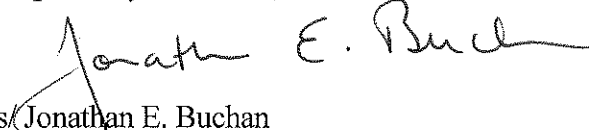
By this Motion, the News Media Intervenors seek access to the Sentencing Memorandum and the attachments thereto filed by Defendant, as well as any statements or letters of support submitted to the Court on behalf of Defendant in connection with his sentencing, on the grounds that the press and the public have a First Amendment and common law right to access criminal

proceedings and court documents, and that such rights apply to sentencing hearings and documents filed in connection with such hearings. *See In re Washington Post Co.*, 807 F.2d 383, 388–390 (4th Cir. 1986) (holding that the First Amendment right of access applies to documents filed in connection with plea hearings and sentencing hearings in criminal cases, as well as to the hearings themselves); *see also In re Time Inc.*, 182 F.3d 270, 271 (4th Cir. 1999).

This Motion is based upon the Memorandum filed concurrently herewith, the documents on file in this matter, and any argument of counsel the Court shall wish to entertain.

This the 27th day of April, 2015.

Respectfully submitted,



/s/ Jonathan E. Buchan

Jonathan E. Buchan

N.C. Bar No. 8205

Brian P. Troutman

N.C. Bar No. 40131

McGUIREWOODS LLP

201 North Tryon Street

Charlotte, North Carolina 28202

Telephone: (704) 343-2063

Facsimile: (704) 444-8714

jbuchan@mcquirewoods.com

btroutman@mcquirewoods.com

Katie Townsend*

REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th Street NW

Suite 1250

Washington, DC

202.795.9303

202.795.9310 (fax)

ktownsend@rcfp.org

* *Pro hac vice* admission pending

Counsel for the News Media Intervenors

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion of the Reporters Committee for Freedom of the Press, The Associated Press, Bloomberg L.P., The Charlotte Observer Publishing Company, Dow Jones & Company, Inc., First Look Media, Inc., National Public Radio, Inc., The New York Times Company and The Washington Post to Intervene and Unseal was filed with the Clerk of Court and served via email and U.S. Mail on counsel for all parties, as set forth below.

James P. Melendres
National Security Division
600 E. Street NW, 10th Floor
Washington, DC 20005
james.p.melendres@usdoj.gov
Attorney for Plaintiff

Jill Westmoreland Rose
United States Attorney
100 Otis Street
Asheville, NC 28801
jill.rose@usdoj.gov
Attorney for Plaintiff

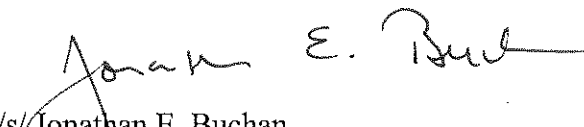
Richard S. Scott
National Security Division
600 E Street NW, 10th Floor
Washington, DC 20005
richard.s.scott@usdoj.gov
Attorney for Plaintiff

David E. Kendall
Williams & Connolly LLP
725 Twelfth Street NW
Washington, DC 20005
dkendall@wc.com
Attorney for Defendant

Simon A. Latcovich
Williams & Connolly, LLP
725 Twelfth Street, NW
Washington, DC 20005
slatcovich@wc.com
Attorney for Defendant

Jacob H. Sussman
Tin Fulton Walker & Owen, PLLC
301 Park Avenue
Charlotte, NC 28203
jsussman@tinfulton.com
Attorney for Defendant

This the 27th day of April, 2015.


/s/ Jonathan E. Buchan